UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.
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BROOKLYN OFFICE

GUY MOLINARI, WILLIAM C. THOMPSON, JR., Individually and in his Official Capacity as the New York City Comptroller, BETSY GOTBAUM, Individually and in her Official Capacity as Public Advocate for the City of New York, BILL DE BLASIO, Individually and in his Official Capacity as a Member of the New York City Council, LETITIA JAMES, Individually and in her Official Capacity as a Member of the New York City Council, CHARLES BARRON, Individually and in his Official Capacity as a Member of the New York City Council, ROSALIE CALIENDO, PHILLIP DEPAOLO, PHILIP FOGLIA, KENT LEBSOCK, ANDREA RICH, MIKE LONG, TOM LONG, IDA SANOFF, GLORIA SMITH, ERIC SNYDER, KENNETH J. BAER, KENNETH A. DIAMONDSTONE, PETER GLEASON, MARK WINSTON GRIFFITH, ARI HOFFNUNG, ALFONSO QUIROZ, YDANIS RODRIGUEZ, JO ANNE SIMON, NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC., and U.S. TERM LIMITS,

Plaintiffs,

v.

MICHAEL R. BLOOMBERG, in his Official Capacity as Mayor of the City of New York, CHRISTINE C. QUINN, in her Official Capacity as Speaker of the New York City Council, the NEW YORK CITY COUNCIL, THE CITY OF NEW YORK, JAMES J. SAMPEL, in his Official Capacity as President of Commissioners of Elections for the Board of Elections in the City of New York, and BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendants.

COMPLAINT

Civ. No. 08 4539

KORMAN, J.

J. ORENSTEIN, M.J.

Plaintiffs Guy Molinari, William C. Thompson, Jr., Betsy Gotbaum, Bill de Blasio, Letitia James, Charles Barron, Rosalie Caliendo, Phillip DePaolo, Philip Foglia, Kent Lebsock, Mike Long, Tom Long, Andrea Rich, Ida Sanoff, Gloria Smith, Eric Snyder, Kenneth J. Baer, Kenneth A. Diamondstone, Peter Gleason, Mark Winston Griffith, Ari Hoffnung, Alfonso Quiroz, Ydanis Rodriguez, Jo Anne Simon, and U.S. Term Limits, by and through their attorneys, Gibson, Dunn & Crutcher LLP, and Norman Siegel, Esq., and Plaintiff New York Public Interest Research Group, Inc. ("NYPIRG"), by and through its attorneys, Lovells LLP, (collectively, "Plaintiffs") allege for their Complaint as follows:

NATURE OF THE ACTION

1. In the United States, the right to vote is a fundamental right and votes have consequences. This bedrock democratic principle does not crumble in the face of a weakened economy, nor should it be violated for the direct benefit of specific individual elected officials.

2. This civil-rights action seeks declaratory and injunctive relief, pursuant to 42 U.S.C. § 1983, for violations of the First and Fourteenth Amendments to the United States Constitution arising out of the unconstitutional attempt by Mayor Michael R. Bloomberg, City Council Speaker Christine C. Quinn, and a majority of the New York City Council to undo the will of New York City voters and negate the term-limits restrictions upon would-be career politicians that City voters *twice* upheld through Citywide referenda in 1993 and 1996.

3. Twice in the recent past—first in 1993 and, then, again in 1996—the voters of New York City expressed their will in referenda ("the Referenda") by voting overwhelmingly that elected City officials should serve a maximum of two consecutive terms in the same public office. First, in 1993, the voters ratified a two-term limit on local elected offices (Mayor, Public Advocate, Comptroller, Borough President, and City Council) by a 59% to 41% margin. The will of the City's voters so expressed was thereby embodied in the City's Charter, which, until

recently, limited those elected City officials to two consecutive terms in office and established the "public policy of the City of New York to limit to not more than eight years the time elected officials can serve," a policy that was designed to ensure "that elected representatives are 'citizen representatives' who are responsive to the needs of the people and are not career politicians." Former N.Y. City Charter §§ 1137-38 (2004) (amended Nov. 3, 2008) (the "Old Term-Limits Law"). Then , in 1996, the voters rejected, by a vote of 54% to 46%, a referendum placed on the ballot by the City Council to alter that two-term limit and permit Council Members to serve a third term.

4. That was then; this is now: the New York City Council and Mayor Bloomberg have now seized upon the recent economic downturn to rush through with unprecedented speed the dismantling of the Old Term-Limits Law—brushing aside the sizeable investments of personal, political, and financial capital that the voters expended in connection with Referenda ratifying a two-term limit, and thereby rendering meaningless the votes cast by City voters in connection with those Referenda. Eager to hold onto their political offices, term-limited City Council Members and Mayor Bloomberg forced through an amendment to the Old Term-Limits Law in which they awarded themselves by legislative fiat what they had been twice denied by voters at the ballot box—eligibility to serve a third consecutive term in office. *See* N.Y. City Local Law 51 of 2008 (the "Term-Limits Amendment").

5. There were acceptable alternatives available to Mayor Bloomberg. In January 2008, the Mayor announced in his "State of the City" address that he would "appoint a new Charter Revision Commission that will conduct a top-to-bottom review of the City government over the next 18 months," and that would "consider any proposal that will improve the life of New York and New Yorkers." Press Release, *Mayor Bloomberg Delivers 2008 State of the City*

Address, Office of the Mayor, Jan. 17, 2008. This Charter Revision Commission easily could have placed the issue of a term-limit amendment before the voters on the November 2008 ballot. But Mayor Bloomberg chose not to do so. Instead, he made an end run around the voters by introducing and supporting the Term-Limits Amendment.

6. The issues now before this Court go to the heart of the City's local democracy and to the core of its voters' sacred constitutional freedoms. Allowing a self-interested Mayor and City Council to dismiss the results of two recent referenda undermines the integrity of the voting process, effectively nullifies the constitutionally-protected right to vote, and perniciously chills political speech by sending the unavoidable message that the democratic exercises of initiatives and referenda can be disregarded by public officials, in violation of the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

7. Accordingly, Plaintiffs seek (1) a declaration that this legislation altering voter-ratified term limits contravenes established constitutional principles protecting the right to vote by guaranteeing voters meaningful participation in the political process and, therefore, is unconstitutional and invalid; and (2) injunctive relief to prevent the Board of Elections in the City of New York from enforcing the provisions of the Term-Limits Amendment.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. §§ 1331 and 1343. This civil action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Plaintiffs seek a declaration of their rights pursuant to 28 U.S.C. §§ 2201-02 in this case of actual controversy within this Court's jurisdiction.

9. This Court has personal jurisdiction over Defendants because Defendants do or transact business in the Eastern District of New York ("the District"), have committed unlawful

acts in the District or outside of the District having consequences within the District, and/or do systematic and continuous business in the District.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) because Defendants or their agents may be found in this District and because Defendants are subject to personal jurisdiction in this District.

THE PARTIES

11. Plaintiff Guy Molinari is an individual who is enrolled as a member of the Republican Party and resides in the borough of Staten Island, New York City. Mr. Molinari is a former Staten Island Borough President and a former Member of Congress representing the 14th Congressional District. In 2000, Mr. Molinari appeared in a prior case in this District as the lead plaintiff and Chairperson of Senator John McCain's 2000 New York State presidential campaign committee to challenge the constitutionality of the unduly burdensome ballot-access requirements for potential primary candidates that New York Law imposed at the time. *See Molinari v. Powers*, 82 F. Supp. 2d 57, 71 (E.D.N.Y. 2000) (Korman, J.). Mr. Molinari maintains that the Term-Limits Amendment has the effect of unduly burdening access to referenda and other direct ballot initiatives and, therefore, violates the First and Fourteenth Amendments to the United States Constitution. He further maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

12. Plaintiff William C. Thompson, Jr. is the New York City Comptroller. In his capacity as Comptroller, Plaintiff Thompson is an independently elected City official who serves as the Chief Financial Officer of the City of New York. Plaintiff Thompson resides in the borough of Manhattan, New York City, and maintains his principal place of business at 1 Centre Street, New York, New York, 10007. Plaintiff Thompson is enrolled as a member of the

Democratic Party. Plaintiff Thompson contemplated running as a candidate for Mayor of New York in the 2009 election cycle even before Mayor Bloomberg announced his intention to seek an amendment to the City's term limits. Mayor Bloomberg is serving in his second consecutive term as Mayor—a term that will conclude on December 31, 2009. Prior to the enactment of the Term-Limits Amendment, Mayor Bloomberg would have been barred from running for a third term in the 2009 election cycle, but the Term-Limits Amendment, if valid, would now permit him to do so. Thus, Plaintiff Thompson has a direct interest in determining the validity of the Term-Limits Amendment because the issue affects his pursuit of future political office. Plaintiff Thompson maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

13. Plaintiff Betsy Gotbaum is the Public Advocate for the City of New York. In her capacity as Public Advocate, Plaintiff Gotbaum is an *ex officio* member of all committees of the New York City Council and, by designation of the Council Speaker, presides over all Council meetings. Plaintiff Gotbaum resides in the borough of Manhattan, New York City, and her principal place of business is located at 1 Centre Street, New York, New York, 10007. She is enrolled as a member of the Democratic Party. Plaintiff Gotbaum's second full term in office concludes on December 31, 2009. Plaintiff Gotbaum maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

14. Plaintiff Bill de Blasio is a Member of the New York City Council representing Council District 39 in Brooklyn. He resides in the borough of Brooklyn, New York City, and maintains a legislative office at 250 Broadway, New York, New York, 10007, and a district

office at 2907 Fort Hamilton Parkway, Brooklyn, New York, 11218. He is enrolled as a member of the Democratic Party. Plaintiff de Blasio is a second-term Member of the Council whose second full term in office will conclude on December 31, 2009. Plaintiff de Blasio contemplated running as a candidate for another local office occupied by a term-limited incumbent even before Mayor Bloomberg announced his intention to seek an amendment of the City's term-limits laws. Thus, Plaintiff de Blasio has a direct interest in determining the validity of the Term-Limits Amendment because the issue affects his pursuit of future political office. Plaintiff de Blasio voted against the Term-Limits Amendment passed by the City Council on October 23, 2008. Plaintiff de Blasio maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

15. Plaintiff Letitia James is a Member of the New York City Council representing Council District 35 in Brooklyn. She resides in the borough of Brooklyn, New York City, and maintains a legislative office at 250 Broadway, New York, New York, 10007, and a district office at 67 Hanson Place, Brooklyn, New York, 11217. She is enrolled as a member of the Working Families Party. Plaintiff James is a first-term Member of the Council whose first full term in office will conclude on December 31, 2009. She was elected as the candidate of the Working Families Party. Plaintiff James voted against the Term-Limits Amendment passed by the City Council on October 23, 2008. Plaintiff James maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials. She further maintains that she will receive unequal treatment under Term-Limits Amendment because it is contemplated that this law will

be overturned by referendum after the next election cycle, thereby advantaging only currently term-limited elected City officials.

16. Plaintiff Charles Barron is a Member of the New York City Council representing Council District 42 in Brooklyn. He resides in the borough of Brooklyn, New York City, and maintains a legislative office at 250 Broadway, New York, New York, 10007, and a district office at 718 Pennsylvania Avenue, Brooklyn, New York, 11207. He is enrolled as a member of the Democratic Party. Plaintiff Barron is a second-term Member of the Council whose second full term in office will conclude on December 31, 2009. Plaintiff Barron contemplated running as a candidate for another local office occupied by a term-limited incumbent even before Mayor Bloomberg announced his intention to seek an amendment of the City's term-limits laws. Thus, Plaintiff Barron has a direct interest in determining the validity of the Term-Limits Amendment because the issue affects his pursuit of future political office. Plaintiff Barron voted against the Term-Limits Amendment passed by the City Council on October 23, 2008. Plaintiff Barron maintains that any change to the term limits applicable to elected City officials should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

17. Plaintiff Rosalie Caliendo is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Ms. Caliendo voted in favor of the 1993 referendum proposition that established a two-term limit on elected City officials (the "1993 Referendum") and against the 1996 referendum proposition that would have repealed that limit for City Council Members (the "1996 Referendum"). If given the opportunity, Ms. Caliendo would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

18. Plaintiff Phillip DePaolo is an individual who is an independent voter, not enrolled as a member of any political party, and who resides in the borough of Brooklyn, New York City. Mr. DePaolo voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Mr. DePaolo would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

19. Plaintiff Philip Foglia is an individual who is enrolled as a member of the Republican Party and resides in the borough of the Bronx, New York City. Mr. Foglia voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Mr. Foglia would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

20. Plaintiff Kent Lebsock is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Manhattan, New York City. Although he personally opposes term limits, Mr. Lebsock maintains that any change to the term limits applicable to elected City officials should be adopted by City voters, rather than by those very term-limited elected City officials.

21. Plaintiff Mike Long is the Chairman and an enrolled member of the New York State Conservative Party, who resides in the borough of Brooklyn, New York City. Mr. Long voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Mr. Long would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

22. Plaintiff Tom Long is an individual who is enrolled as a member of the Conservative Party and resides in the borough of Queens, New York City. Mr. Long voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If

given the opportunity, Mr. Long would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

23. Plaintiff Andrea Rich is an individual who is enrolled as a member of the Republican Party and resides in the borough of Manhattan, New York City. Ms. Rich voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Ms. Rich would vote in favor of a referendum proposition to retain the two-term limit on all elected City officials.

24. Plaintiff Ida Sanoff is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Ms. Sanoff voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Ms. Sanoff would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

25. Plaintiff Gloria Smith is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Staten Island, New York City. Ms. Smith voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Ms. Smith would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

26. Plaintiff Eric Snyder is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Mr. Snyder voted in favor of the 1993 Referendum proposition and against the 1996 Referendum proposition. If given the opportunity, Mr. Snyder would vote in favor of a referendum proposition to retain the two-term limit on elected City officials.

27. Plaintiff Kenneth J. Baer is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Mr. Baer developed concrete plans to seek election as a New York City Council Member for Brooklyn's 33rd Council District, to fill the seat currently occupied by Council Member David Yassky. Council Member Yassky will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Baer raised approximately $12,000, spent approximately $9,000, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

28. Plaintiff Kenneth A. Diamondstone is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Mr. Diamondstone developed concrete plans to seek election as a New York City Council Member for Brooklyn's 33rd Council District, to fill the seat currently occupied by Council Member David Yassky. Council Member Yassky will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Diamondstone raised approximately $42,000, spent approximately $5,000, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

29. Plaintiff Peter Gleason is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Manhattan, New York City. Mr. Gleason developed concrete plans to seek election as a New York City Council Member for Manhattan's 1st Council District, to fill the seat currently occupied by Council Member Alan J. Gerson. Council Member Gerson will complete his second term in office next year and, absent the Mayor

and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Gleason raised approximately $10,000, spent approximately $3,000, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

30. Plaintiff Mark Winston Griffith is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Mr. Griffith developed concrete plans to seek election as a New York City Council Member for Brooklyn's 36th Council District, to fill the seat currently occupied by Council Member Albert Vann. Council Member Vann will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Griffith raised approximately $22,000, spent approximately $1,500, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

31. Plaintiff Ari Hoffnung is an individual who is enrolled as a member of the Democratic Party and resides in the borough of the Bronx, New York City. Mr. Hoffnung developed concrete plans to seek election as a New York City Council Member for the Bronx's 11th Council District, to fill the seat currently occupied by Council Member G. Oliver Koppell. Council Member Koppell will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Hoffnung raised approximately $75,000, spent approximately $37,500, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

32. Plaintiff Alfonso Quiroz is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Queens, New York City. Mr. Quiroz developed concrete plans to seek election as a New York City Council Member for Queens' 25th Council District, to fill the seat currently occupied by Council Member Helen Sears. Council Member Sears will complete her second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate her seat at that time. Plaintiff Quiroz raised approximately $50,000, spent approximately $5,000, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

33. Plaintiff Ydanis Rodriguez is an individual who is enrolled as a member of the Democratic Party and resides in the borough of the Bronx, New York City. Mr. Rodriguez developed concrete plans to seek election as a New York City Council Member for the 10th Council District, covering portions of Manhattan and the Bronx, to fill the seat currently occupied by Council Member Miguel Martinez. Council Member Martinez will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Rodriguez raised approximately $31,000, spent approximately $2,000, and expended significant personal energies towards his planned run for office prior to passage of the Term-Limits Amendment.

34. Plaintiff Jo Anne Simon is an individual who is enrolled as a member of the Democratic Party and resides in the borough of Brooklyn, New York City. Ms. Simon developed concrete plans to seek election as a New York City Council Member for Brooklyn's 33rd Council District, to fill the seat currently occupied by Council Member David Yassky.

Council Member Yassky will complete his second term in office next year and, absent the Mayor and City Council's enactment of the Term-Limits Amendment, would have been forced to vacate his seat at that time. Plaintiff Simon raised approximately $55,000, spent approximately $13,000, and expended significant personal energies towards her planned run for office prior to passage of the Term-Limits Amendment. Although she personally opposes term limits, Ms. Simon maintains that any change to the term limits applicable to elected City officials should be adopted by City voters.

35. Plaintiff NYPIRG was formed in 1973 as a not-for-profit, non-partisan group established to effect policy reforms while training students and other New Yorkers to be advocates. NYPIRG is New York State's largest organization that works on issues such as good government reforms, environmental preservation, consumer protection, and issues affecting public health. Among other things, NYPIRG plays a leading role in New York State to strengthen and protect the right of State residents to vote. Its principal place of business is located in the borough of Manhattan, New York City. Plaintiff NYPIRG took no position concerning the underlying merits of the 1993 and 1996 Referenda, and has remained neutral on the issue of whether the City's term-limits laws should be maintained, modified, or abolished. Plaintiff NYPIRG has likewise taken no position on the underlying merits of the recent legislation seeking to alter the term limits applicable to elected City officials, but maintains that any change to those term limits should be adopted—if at all—by City voters, rather than by those very term-limited elected City officials.

36. Plaintiff U.S. Term Limits is an organization dedicated to advocating for limited terms for elected officials. Its principal place of business is located in Fairfax, Virginia. U.S. Term Limits and its members expended significant associational and personal resources in New

York City to promote and support the 1993 Referendum and, again, to oppose the 1996 Referendum. U.S. Term Limits opposes changing the two-term limit applicable to elected City officials, and, in any event, believes that any such change should be accomplished only through voter referendum under section 23 of the Municipal Home Rule Law.

37. Defendant Michael R. Bloomberg is the Mayor of the City of New York. Mayor Bloomberg is the chief executive officer of New York City, responsible for maintaining the effectiveness and integrity of City-government operations. Mayor Bloomberg's second full term in office concludes on December 31, 2009. Plaintiffs bring this action against Mayor Bloomberg in his official capacity.

38. Defendant Christine C. Quinn is a Member of the New York City Council and has served as Speaker of the Council since January 2006. In her capacity as Council Member, Defendant Quinn represents Council District 3 in Manhattan. She resides in the borough of Manhattan, New York City, and maintains a legislative office at City Hall, New York, New York, 10007, and a district office at 224 West 30th Street, New York, New York, 10001. Defendant Quinn is a second-term Member of the Council whose second full term in office will conclude on December 31, 2009. Plaintiffs bring this action against Speaker Quinn in her official capacity.

39. Defendant the New York City Council is the legislative body of the City of New York, organized under Chapter 2 of the New York City Charter. Defendant City Council's principal place of business is located at City Hall, New York, New York, 10007, and at 250 Broadway, New York, New York, 10007.

40. Defendant the City of New York is a municipal corporation organized under the laws of the State of New York and the New York City Charter.

41. Defendant James J. Sampel is the President of Commissioners of Elections for the Board of Elections in the City of New York. Upon information and belief, Mr. Sampel is responsible for certifying names to appear on the ballot in City elections. Plaintiffs bring this action against Defendant Sampel in his official capacity.

42. Defendant Board of Elections in the City of New York is an administrative agency organized under Article III, Title 2 of the New York Election Law, with offices in all five boroughs of New York City. The Board of Elections in the City of New York maintains an office at 345 Adams Street, 4th Floor, Brooklyn, NY 11201.

FACTUAL AND LEGAL BACKGROUND

A. In Two Citywide Referenda, City Voters Twice Approved Term Limits For Elected City Officials After Intense Political Debate

43. The question of term limits is "one of the most contentious and emotional issues" in public life. Sewell Chan, *Debating the Pros and Cons of Term Limits,* N.Y. Times, Oct. 15, 2008, *available at* http://cityroom.blogs.nytimes.com/2008/10/15/debating-the-pros-and-cons-of-term-limits (Statement of Gene Russianoff). It is a question that has prompted fierce debate since the framing of the United States Constitution, when Thomas Jefferson lamented the "perpetual eligibility" of elected officials grasping to maintain their power. Alex Altman, *A Brief History of Term Limits*, Time Magazine, Oct. 3, 2008.

44. The debate surrounding term limits came with full force to New York City in 1993 when the civic organization New Yorkers for Term Limits, supported by Plaintiff U.S. Term Limits, launched a campaign to combat the "ossification of municipal government" resulting from the entrenchment of incumbents in office. This entrenchment was evident from the fact that "nearly 95 percent of . . . incumbents were re-elected" in the 1991 City Council elections. Ronald S. Lauder, Letter to the Editor, *New York Needs Term Limits for City Council*

and Top Posts, N.Y. Times, Sept. 4, 1993, at A18. New Yorkers for Term Limits had the support of many prominent New Yorkers, including businessman Ronald Lauder.

45. In the past decade, only 2 out of 107 incumbent City Council candidates lost a re-election bid—a re-election rate of greater than 98%. Moreover, one of those two instances actually involved a contest between the sitting incumbent and a former incumbent holder of the same Council seat. In 2005, Council Member Thomas White, Jr. defeated the incumbent Council Member Allan W. Jennings in the race to represent the 28th Council District. Council Member White, however, had previously represented the 28th District for ten years until the Old Term-Limits Law required him to step aside in 2001. Under the former law, White could not seek another consecutive term in office in 2001, but he was eligible to run again in 2005. In 2001, Council Member Jennings was elected to represent the 28th District, and he maintained that position until Council Member White defeated him in 2005. Thus, aside from this one case in which one incumbent defeated another incumbent, there has been only one unsuccessful race for re-election by an incumbent City Council Member out of 107 such races in the past decade—a re-election rate of greater than 99%.

46. New Yorkers for Term Limits, Plaintiff U.S. Term Limits, and other like-minded organizations and individuals waged an expensive and arduous effort to put the issue of a two-term limit for elected City officials on the November 1993 ballot as a Citywide referendum. Steven Lee Myers, *Ronald Lauder, Leader Of Term-Limit Band*, N.Y. Times, Oct. 24, 1993, at A33.

47. Citizens seeking a vote by referendum in New York City face an arduous task to merely appear on the ballot, let alone persuade fellow voters of the desirability of their position. Municipal Home Rule Law section 37(2) requires that a proponent of a referendum must first

create a petition bearing the signatures of "at least ten per centum of the total number of valid votes cast for governor in such city at the last gubernatorial election" or a total of "thirty thousand, whichever is less." Not any New Yorker can sign these petitions. The Municipal Home Rule Law limits eligibility to "qualified electors . . . who were registered and qualified to vote in such city at the last general election preceding the filing of the petition."

48. Once a petition is filed with the City Clerk it is passed along to the City Council for consideration. If the City Council does not adopt this provision within two months of the filing, the advocates must then re-file an additional petition pursuant to Municipal Home Rule Law section 37(7) within the next two months to require the submission of the question to a public vote. The additional petition must be signed "by qualified electors who did not sign the original petition, equal in number to at least five per centum of the total number of votes cast for governor in such city at the last gubernatorial election, or to fifteen thousand, whichever is less."

49. The entire procedure, moreover, is fraught with expensive legal challenges such as challenges to the validity and sufficiency of the signatures. *See, e.g.*, Steven Lee Meyers, *New Yorkers Approve Limit of 2 Terms for City Officials*, N.Y. Times, Nov. 3, 1993, at B1.

50. New Yorkers for Term Limits, Plaintiff U.S. Term Limits, and other like-minded organizations and individuals expended substantial time, effort, and other resources in navigating these procedures and promoting their message to the citizens of New York City. New Yorkers for Term Limits itself hired six staff members and gathered well over 130,000 signatures to get the proposal on the ballot. This was no cheap endeavor; the organization spent approximately $1,000,000 in the course of doing so. *Id.*

51. Opponents to term limits also mobilized to persuade voters to reject the referendum, likewise expending substantial time, money, and other resources in the process.

Steven Lee Myers, *The 1993 Elections: New York City Roundup; Vallone Says Term Limits Issue is 'Not Dead,'* N.Y. Times, Nov. 4, 1993, at B2.

52. New Yorkers overwhelmingly adopted the 1993 term-limits referendum by a vote of 59% for versus only 41% against—an 18% margin of victory with over one million votes cast. Steven Lee Myers, *New Yorkers Approve Limit of 2 Terms for City Officials*, N.Y. Times, Nov. 3, 1993, at B1.

53. The 1993 Referendum received a majority of voter support in each of the five boroughs. Steven Lee Myers, *The 1993 Elections: New York City Roundup; Vallone Says Term Limits Issue is 'Not Dead,'* N.Y. Times, Nov. 4, 1993, at B2.

54. As enacted by the 1993 Referendum, the City Charter's term-limits provisions provided as follows:

> § 1137. Public Policy. It is hereby declared to be *the public policy of the city of New York to limit to not more than eight consecutive years the time elected officials can serve as mayor, public advocate, comptroller, borough president and council member* so that elected representatives are "citizen representatives" who are responsive to the needs of the people and are not career politicians.
>
> § 1138. Term Limits. Notwithstanding any provision to the contrary contained in this charter, no person shall be eligible to be elected to or serve in the office of mayor, public advocate, comptroller, borough president or council member *if that person had previously held such office for two or more full consecutive terms* (including in the case of council member at least one four-year term), unless one full term or more has elapsed since that person last held such office . . . .

Former N.Y. City Charter §§ 1137-38 (amended Nov. 3, 2008) (emphasis added).

55. In 1996, a mere three years later, City Council Members asked the voters to undo the 1993 Referendum by presenting the voters with a ballot proposal to alter term limits for City Council Members from two consecutive terms to three consecutive terms.

56. In an attempt to convince voters that a two-term limit was ill-advised, proponents of the ballot proposal created the "Coalition for Voter's Choice." Members of the Coalition and other supporters of the proposal to alter term limits held fund raisers, gave speeches, and ran television ads to disseminate their message. Vivian S. Toy, *Foes of Ballot Proposal to Ease Council-Term Limits Law Begin TV Campaign*, N.Y. Times, Oct. 16, 1996, at B3.

57. Ronald Lauder, then a proponent of a two-term limit, defended the 1993 Referendum, spending approximately $2 million to finance a campaign of television advertising and other support to defeat that Council-sponsored ballot proposal. Vivian S. Toy, *Term Limits Stay 8 Years As Extension Is Rejected*, N.Y. Times, Nov. 6, 1996, at B14.

58. New Yorkers voted to uphold a two-term limit and to reject the Council's effort, voting down the 1996 Referendum by a margin of 54% against versus 46% in favor with over one million votes cast. *Id.*

59. Under the two-term rule imposed by the voters in the 1993 and 1996 Referenda, Mayor Bloomberg, Speaker Quinn, Comptroller Thompson, Public Advocate Gotbaum, Council Members de Blasio and Barron, four of the five currently sitting Borough Presidents, and 32 other City Council Members (for a total of 35 out of the Council's 51 Members) are serving in their second consecutive terms, and therefore would be term-limited and precluded from seeking re-election to their respective offices in the 2009 election cycle.

B. After Initially Respecting the Will of the Voters, Mayor Bloomberg and His Allies Ultimately Decide to Ignore the Results of the 1993 and 1996 Referenda

60. After the defeat of the Council-sponsored 1996 Referendum, Mr. Lauder was quoted as saying: "The fact is, term limits are a part of New York, and now they'll always be a part of New York." *Id.* With millions of votes cast in the two Referenda, public officials throughout the political spectrum understood that a two-term limit was the will of the people.

61. Indeed, until recently, even Mayor Bloomberg was a staunch supporter of the Old Term-Limits Law.

62. It was that very law that cleared the way for Mr. Bloomberg's candidacy in the first place. Back in 2001, then-Mayor Rudolph Giuliani, approaching the end of his second term, considered seeking an amendment to the City's term-limits laws that would have allowed him to remain in office, but he ultimately declined to do so. *See, e.g.*, Jennifer Steinhauer, *Giuliani Says He Won't Seek a Third Term*, N.Y. Times, Oct. 4, 2001, at D1; Michael Saul & Frank Lombardi, *Mayor: Let Term-Limit Law Stand*, N.Y. Daily News, Mar. 6, 2002, at 1.

63. In the years since he took office, Mayor Bloomberg repeatedly made clear his support for term limits in numerous public statements. In 2002, for example, Mayor Bloomberg opposed a City Council initiative to adjust the voter-approved Charter provisions governing certain Council Members' terms of office. He even went so far as to veto the initiative after it passed a full Council vote (although the Council ultimately overrode his veto). In his veto message, the Mayor pointedly observed that even legitimate concerns about the propriety of term limits must yield to:

> the imperative that elected officials defer to the considered judgment of the electorate.
>
> . . . .
>
> . . . *I believe it is simply inappropriate for those [Council] members elected in 1997, who were aware of the rules under which they were elected, to seek to change those rules in a manner that may work to their own advantage.*
>
> The same citywide electorate that has honored both the City Council and me by placing its trust in us also voted for term limits, and then voted to retain them. . . . At a time of excessive cynicism about so many of our institutions, I believe that elected officials should seek at every opportunity to maintain and enhance the trust of the citizens. This bill would send an unfortunate

> message about the impact and importance of their votes and set a perilous precedent for future leaders of the City.

Aug. 20, 2002 Mayoral Veto Message at 1, 3 (emphasis added).

64. Likewise, earlier that year, the Mayor made crystal clear his view that any changes to the term-limits laws should be undertaken by way of voter referendum, saying that he would "'oppose any change in the [term-limits] law that a legislative body tries to make,' . . . 'I do think that after you've asked the public to express their views twice, you don't try to circumvent the will of the public.'" Michael Saul & Frank Lombardi, *Mayor: Let Term-Limit Law Stand*, N.Y. Daily News, Mar. 6, 2002, at 1.

65. Indeed, so opposed was the Mayor to altering term-limits by legislation that he reportedly described one Council effort to amend those Charter provisions as "disgusting." Clyde Haberman, *The Bloomberg Test of the Democratic Process*, N.Y. Times, Oct. 3, 2008, at B1.

66. More recently, Mayor Bloomberg characterized some Council Members' calls for a change to term limits as "'disgraceful'" and "an anti-democratic 'outrage'" and even criticized a proposal to resubmit the term-limits issue to a third voter referendum. "'I think the public has spoken twice and they've spoken quite clearly," he stated. "I don't know that you should keep shopping for a different answer.'" Michael Saul, *Mike Raps Council's Push to Nix Term Limits*, N.Y. Daily News, Nov. 23, 2005, at 10; David Seifman, *Term Limit Foes Failing*, N.Y. Post, July 19, 2006, at 2.

67. And less than a year ago, a spokesman for the Mayor reaffirmed that position when he "said the mayor has been clear about his view on term limits. 'It's eight years and he's out. He believes in term limits. He has absolutely no interest in a third term.'" Grace Rauh, *A Third Term May Glimmer for Mayor*, N.Y. Sun, Nov. 29, 2007, at 1.

68. As recently as April of this year, Mayor Bloomberg publicly maintained his opposition to changing the term-limits laws. He stated publicly that "'I favor term limits, and I'm looking forward to being mayor through midnight on Dec. 31, '09, and then doing something else. . . . I'm not seeking a third term.'" Adam Lisberg, *'I Favor Term Limits,' Sez Mike*, N.Y. Daily News, Apr. 15, 2008, at 14.

69. Likewise, Mayor Bloomberg's political ally, City Council Speaker Christine Quinn, espoused the same public views on the issue of term limits. For most of her career, she was a public opponent of changes to the City's term-limits laws. Last December, for example, she stated publicly that she "opposed extending term limits." Ray Rivera, *Countering Mayor's Bid with a Bill to Put Term Limits in the Voters' Hands*, N.Y. Times, Oct. 5, 2008, at A38.

70. But Mayor Bloomberg's position on the City's term-limits laws, and the twice-expressed will of its voters on the issue, began to change as he approached the twilight of his mayoral service.

71. According to published reports, Mayor Bloomberg's "unofficial emissaries" first reached out to Mr. Lauder two years ago "to persuade him not to fight a one-time extension of term limits." Sam Roberts & Eric Konigsberg, *Enigmatic Billionaire Is Drawn Back to the Term Limits Fray*, N.Y. Times, October 9, 2008, at A1.

72. Mayor Bloomberg even conducted a poll in June 2008 to explore whether the voters would support a change to the term-limits laws—but "the poll showed little sentiment among voters for overturning the term-limits law that will force [him] and other city officials to leave office on Dec. 31, 2009." *Id.*

73. Turning his sights to potential Council legislation, the Mayor then "quietly approached some of the city's most powerful media figures"—including the owners and/or top

executives of the *New York Times*, *New York Post*, and *Daily News*—"to assess whether their publications would endorse a bid to overturn New York City's term limits, which would clear a path for him to run for re-election." Michael Barbaro & Tim Arango, *Bloomberg Said to Test a Term-Limit Reversal*, N.Y. Times, Aug. 23, 2008, at B1; Kirsten Danis, *Mayor Bloomberg's Aides Plotting Path Around Term Limits, Sez Source*, N.Y. Daily News, Apr. 12, 2008, at 2.

74. Shortly thereafter, all three publications issued editorials calling for legislative action to amend the term-limits laws to allow Mayor Bloomberg (and other City officials) to serve three consecutive terms in office. *See* Editorial, *The Limits of Term Limits*, N.Y. Times, Oct. 1, 2008, at A23; Editorial, *Run, Mike, Run*, N.Y. Post, Sept. 30, 2008, at 28; Editorial, *Run. Mike, Run*, N.Y. Daily News, Sept. 22, 2008, at 20.

75. Speaker Quinn and Council leadership have conducted similar polling in recent years, reportedly to the same end—those polls consistently showed that term limits continue to enjoy the support of most New York City voters. Winnie Hu, *City Council Speaker Commissioned a Poll on Extending Terms*, N.Y. Times, July 18, 2006, at B6 (noting that, "[w]ithin months of being elected speaker of the City Council, Christine C. Quinn commissioned a citywide poll that sought public input on whether to extend term limits for council members," but that Mayor Bloomberg "strongly criticized the Council for even considering going against the voters' wishes"); Maggie Haberman, *Voters Cool to Terms Change*, N.Y. Post, Sept. 30, 2008, at 8 (confirming that a "Quinnipiac University poll taken in mid-July shows that voters opposed by 2 to 1 a move to extend term limits so current officials can serve out another four years").

76. Ignoring the democratically achieved result of the two previous Referenda, and learning that the voters apparently would not support a change in the term-limits laws, the Mayor

and Speaker decided to pursue the surer course of Council legislation to assume themselves a third term in office.

C. Mayor Bloomberg Lays the Foundation for a Move to Alter the City's Term-Limits Laws, Introduces Council Legislation to that Effect, and then Launches His Campaign for Re-Election

77. At an October 2, 2008 press conference, Mayor Bloomberg, citing the financial crisis as his rationale, announced his plan to support a City Council legislative proposal to alter term limits for elected City officials and, if successful, to seek re-election for a third term as Mayor; "I have directed my staff," he stated, "to work with [Speaker Quinn's] staff to produce a new term limits bill. If the Council passes it, I will sign it—and I would plan to run for re-election." Oct. 2, 2008 Mayoral Press Release.

78. Later that day, Speaker Quinn announced that "legislation to alter the city's term limits law would be introduced on Tuesday[, October 7th], paving the way for [Mr.] Bloomberg, Ms. Quinn and more than 40 other elected officials to stay in office four more years." David W. Chen, *Bill Paves Way for a Third Term for Bloomberg*, N.Y. Times, Oct. 3, 2008, at A1. Speaker Quinn "had been expected to run for mayor next year," but she said after her announcement that "she would instead run for re-election to her Council seat and the speakership if the term limit law was amended. She acknowledged that she had retreated from her previous—and adamant—opposition to any changes in the 15-year-old law." *Id.*

79. Only a few days later, on Sunday, October 12, 2008, Speaker Quinn, to no one's surprise, announced her intention to support the Mayor's proposed term-limits amendment (the "Term-Limits Bill"), despite the fact that she had "once vowed she would *never* tinker with term limits." David W. Chen, *Speaker Pledges Support, but Mayor Still Needs More*, N.Y. Times, Oct. 13, 2008, at A21 (emphasis added).

D. The Term-Limits Proposal Draws a Chorus of Vigorous Public Criticism for Thwarting the Will of the People as Expressed in Two Referenda

80. Mayor Bloomberg and Speaker Quinn's plan to obtain Council approval for a term-limits change was immediately met with a chorus of vigorous criticism from numerous good-government groups, media commentators, and government officials. NYPIRG, for example, issued a statement criticizing the Mayor's proposal as "worthy of 'democracy' in a banana republic." Clyde Haberman, *The Bloomberg Test of the Democratic Process*, N.Y. Times, Oct. 3, 2008, at B1. A NYPIRG spokesperson observed in another statement that "'[i]t's just plain wrong to overturn the will of the voters by legislation. . . . We're supposed to be a government of laws, not of men.'" Keith B. Richburg, *Bloomberg Is Said to Seek Reelection Despite Term Limit*, Wash. Post, Oct. 1, 2008, at A2.

81. Henry Stern, the President of New York Civic, a good-government group focused on City politics, and a former City Council Member and New York City Parks Commissioner, likewise condemned Mayor Bloomberg's term-limits proposal as contrary to fundamental democratic values. As Mr. Stern observed:

> [W]e believe that this is the greatest assault on democracy (which means rule by the people) that we have ever seen in city government. The attack is not being made by radicals, anarchists or other extremists, but by a cabal of the richest and most powerful men in New York, aided and abetted by those who live on their leavings and desire their favor. They include City Councilmembers desperate to avoid unemployment or honest labor, highly unlikely to earn the $122,500 the city pays them (including lulus) without any restriction on their private business or other income.
>
> . . . .
>
> The issue to us that New York, a proud city in a free country, should be a democracy, not a banana republic where the expressed will of the people counts for naught when it conflicts with the self-serving desires of the oligarchs and the nomenklatura.

Henry J. Stern, *The Mother of All Conflicts*, N.Y. Civic, Oct. 14, 2008.

82. As a recent *Newsday* editorial observed, "[i]n seeking to force through a shot at another four years, Bloomberg is showing his autocratic side—and it is not at all flattering." Editorial, *Not Like That, Mr. Mayor*, Newsday, Oct. 10, 2008, at A40.

83. The Association of the Bar of the City of New York also criticized the Term-Limits Bill:

> It is critically important that voters have confidence that when they vote on a matter, it counts. Taking the decision on a change in term limits away from the voters who have twice voted on them can only serve to engender cynicism regarding the political process, derogate the referendum process and potentially discourage voter participation in the future. This is particularly so here where a majority of the Council members who would vote on the change are personally affected. It would indeed be a tall order to convince New Yorkers that in taking this matter unto themselves after having been twice affirmed by the voters, that the Council members had only the public interest at heart. In short, a change in term limits by legislative action would be bad policy, contrary to principles of good government and potentially damaging to our City institutions.

Sewell Chan and Jonathan P. Hicks, *More Opposition to Bloomberg's Term Limits Plan*, N.Y. Times, October 14, 2008, *available at* http://cityroom.blogs.nytimes.com/2008/10/14/more-opposition-to-term-limits-plan.

84. And numerous public officials likewise voiced objections to the Mayor's proposal, including Senator Hillary Rodham Clinton, New York Congressman Anthony Weiner, and City Comptroller Plaintiff Thompson. David W. Chen, *Clinton: Path is 'Disturbing'*, N.Y. Times, Oct. 16, 2008, at A36 (Senator Clinton reported to describe the term-limits situation as "disturbing," noting that voters had "voted twice" on term limits and that "the people of New York City should be heard"); Ray Rivera, *Countering Mayor's Bid with a Bill to Put Term Limits in the Voters' Hands*, N.Y. Times, Oct. 5, 2008, at A38 (Congressman Weiner reported to call

the Bloomberg plan the "wrong way to alter term limits"); David W. Chen, *Bill Paves Way for a Third Term for Bloomberg*, N.Y. Times, Oct. 3, 2008, at B1 (Congressman Weiner reported to criticize the Bloomberg plan as a "back-room deal"); Sewell Chan, *Bloomberg Says He Wants a Third Term as New York Mayor*, Int'l Herald Tribune, Oct. 3, 2008 (Comptroller Thompson reported as noting that the Mayor's plan "'constitutes an attempt to suspend democracy" and that "[w]e should not undermine the will of the voters'"); Keith B. Richburg, *Bloomberg Is Said to Seek Reelection Despite Term Limit*, Wash. Post, Oct. 1, 2008, at A2 (Comptroller Thompson reported to strenuously object to the Mayor's attempt to alter City term-limits laws "by legislative fiat").

E. As the Term-Limits Proposal Is Introduced, The Mayor Strikes a Deal to Placate Term-Limits Advocate Ronald Lauder, Who Threatened to Fight Any Term Limits Bill

85. Notwithstanding the vigorous public criticism of Mayor Bloomberg's efforts, the Term-Limits Bill that ultimately led to the enactment of the Term-Limits Amendment now at issue, Introduction 845-A, was introduced on October 7, 2008, as promised by Speaker Quinn. Council Member Simcha Felder, "by request of the Mayor," sponsored the proposal, along with four other Members.

86. The legislation, as originally proposed, drew strenuous objections from term-limits champion Ronald Lauder, who reportedly was poised to fight any such effort.

87. Just before Mayor Bloomberg's announcement of his re-election campaign—after what has been described as a "broad charm offensive" by Mayor Bloomberg "to change Mr. Lauder's mind"—Mr. Lauder reportedly agreed to support a one-time revision of the City's term-limits laws. Michael Barbaro & Kareem Fahim, *Lauder Opposes Mayor on Change to Term Limits*, N.Y. Times, Oct. 6, 2008, at A21.

88. But Mr. Lauder balked when he learned that the Mayor and Speaker were planning to propose a permanent change to the City's term limits, vowing "'If there is a permanent change, I will fight it,'" and announcing publicly that he would "vigorously oppose a plan, outlined by [the] Mayor . . . and City Council members, to permanently change the city's term limits law to allow 12 years in office rather than 8." *Id.*

89. Mr. Lauder's opposition reportedly put the Mayor in a bind, because the Administration's attorneys—perhaps reluctant to concede so clearly that the Term-Limits Bill was designed solely to enable Mayor Bloomberg and sitting Council Members to run for third terms in office—had previously expressed reservations regarding the legality of a one-time revision; "[a] one-time extension of term limits," they argued, "could be seen as self-serving to the legislators who pass it and more vulnerable to a legal challenge." *Id.*

90. In an effort to shore up Mr. Lauder's support for his proposed term-limits change, Mayor Bloomberg reportedly promised that he would convene a Charter revision commission in 2010 "to revisit the term limits issue . . . and submit it again to the voters in a referendum," and, moreover, that he would guarantee Mr. Lauder a seat on that commission. Sam Roberts & Eric Konigsberg, *Enigmatic Billionaire Is Drawn Back to the Term Limits Fray*, N.Y. Times, October 9, 2008, at A1. Mr. Lauder then issued a public statement after an October 8, 2008 meeting with the Mayor, stating: "I will reluctantly support the mayor's legislation to extend term limits to three terms, with the understanding that I will serve on a Charter Revision Commission which will place the question of the number of terms before the voters in 2010." Michael Barbaro & Sewell Chan, *Lauder and Bloomberg Strike a Deal*, N.Y. Times, Oct. 8, 2008, available at http://cityroom.blogs.nytimes.com/2008/10/08/lauder-will-support-mayor-on-term-limits.

91. In public statements following the announcement of the Lauder deal, Mr. Lauder himself made clear that he intends to push for a return to the current term-limits regime once that Charter revision commission is established in 2010. "'To me, this is a temporary solution,' Mr. Lauder said in an interview. 'I would imagine that the next time there's a referendum, I believe the voters will return to a two-term limit. I will fight for it very vigorously.' he added." Sam Roberts & Eric Konigsberg, *Enigmatic Billionaire Is Drawn Back to the Term Limits Fray*, N.Y. Times, Oct. 9, 2008, at A1.

F. The Term Limits Bill Is Amended to Reflect the Deal with Mr. Lauder, and its Supporters in the Council Seek to Push It Through the Legislative Process on an Unprecedented "Fast Track"

92. Mayor Bloomberg then had the Term-Limits Bill amended to conform to the terms of his deal with Mr. Lauder. The Mayor's allies in the Council introduced an amendment to the Bill, adding the following language to clarify that the three-term limit would be repealed once Mr. Lauder's planned referendum is adopted by the electorate (language in italics added by amendment):

> This local law shall take effect immediately and shall apply to elections held on or after the date of its enactment, *provided that this local law shall be deemed repealed upon the effective date of a lawful and valid proposal to amend the charter to set term limits at two, rather than three, full consecutive terms, as such limits were in force and effect prior to the enactment of this local law, where such proposal has been submitted for the approval of the qualified electors of the city and approved by a majority of such electors voting thereon.*

N.Y. City Council Introduction 845-A of 2008 (emphasis added).

93. After the introduction of the Term-Limits Bill on October 7, 2008, Council leadership rushed it through the legislative process on an unprecedented "fast track" virtually never before seen in the context of the Council's consideration of major legislative initiatives.

94. Barely a week after the Bill's introduction, the Council scheduled and held two public committee hearings on it, on Thursday, October 16, 2008 and Friday, October 17, 2008, and scheduled a full Council vote for October 23, 2008. *See* David W. Chen, *Speaker Pledges Support, but Mayor Still Needs More*, N.Y. Times, Oct. 13, 2008, at A21; David W. Chen, *Bill Paves Way for a Third Term for Bloomberg*, N.Y. Times, Oct. 3, 2008, at A1.

95. It is unheard of in the ordinary course for the Council to vote out with such speed a major piece of Charter-changing legislation, a process which typically involves many months of review before a full Council vote. Moreover, there is no pressing need for this legislation that would justify moving the Bill through the legislative process in this manner. Indeed, in light of customary practice, prospective candidates seeking to run for citywide public office in the 2009 election cycle need not even submit ballot access petitions to the New York City Board of Elections until July 2009. *See, e.g.*, Jonathan P. Hicks, *Getting on the Ballot, a Signature at a Time*, N.Y. Times, June 8, 2005, at B4.

96. Troubled by the apparent impropriety of the Term-Limits Bill, a number of Council Members introduced alternative proposals seeking to resolve the current term-limits debate through means other than a Council vote to override the 1993 and 1996 Referenda that established and re-confirmed the City's term-limits laws. For example, Plaintiffs de Blasio and James, along with Council Member David Weprin, sponsored a "Preconsidered Introduction" that would establish a Charter Revision Commission in order to "afford the people of the City of New York an opportunity to vote by referendum at a special election in early 2009 on a proposal to amend the term limits provisions of Chapter 50 of the Charter together with such other or further Charter amendments or revisions that the Charter Revision Commission recommends."

97. Plaintiffs de Blasio and James, along with Council Member Weprin, also sponsored Council Introduction 850-A of 2008, which would amend section 38 of the City Charter to require that a local law must be adopted by voter referendum "if it . . . repeals or amends sections eleven hundred thirty seven or eleven hundred thirty eight of the Charter"—*i.e.*, the Charter's term-limits provisions.

G. On October 23, the City Council Votes Down Amendments Requiring a Referendum and Votes to Expand Its Members' Power

98. Independent polling conducted in the days prior to the Council vote showed that 89% of New Yorkers favored submitting the issue of a potential term-limits change to a voter referendum rather than a Council vote. Sewell Chan & Jonathan P. Hicks, *Council Votes, 29 to 22, to Extend Term Limits*, N.Y. Times, Oct. 23, 2008, *available at* http://cityroom.blogs.nytimes.com/2008/10/23/council-to-debate-term-limits-change.

99. The amended Term-Limits Bill was put to a full Council vote at the Council's stated meeting convened on October 23, 2008. *Id.*

100. An overflow crowd jammed into the Council chamber to hear the debate and observe the Council's vote. Many people attempting to enter the chamber were turned away by the Council's sergeant-at-arms, including known proponents of term limits. *Id.* Members of the crowd could not contain themselves, shouting their disapproval during and after the proceedings.

101. At the October 23rd stated meeting, opponents of the Term Limits Bill proposed another amendment to the Bill—one that would have called for submission of the proposed term-limits change to a Charter revision commission and voter referendum, but supporters of the Bill voted to defeat the amendment, thwarting the attempt by some Members to conduct a referendum in accordance with overwhelming public sentiment. *Id.*

102. After a short round of debate over the amendment, the City Council voted 28 to 22, with one abstention, to prevent the issue from going to a referendum, eliciting groans from citizens watching the proceedings. *Id.*

103. The Council then turned squarely to address the question of term limits. As provided in the City Charter, Council legislation must be approved by a majority vote of the Council, or 26 of the Council's 51 Members. N.Y. City Charter §§ 22, 34. Of the 51 sitting Members who voted on the Term-Limits Bill, 35 would have been barred by the Old Term-Limits Law from seeking reelection in 2009. And of those 35 term-limited Members, 22 voted in favor of amending term limits to give themselves (and other City officials) an additional term in office—comprising more than 75% of the 29-Member majority that enacted the Term-Limits Amendment.

104. Mayor Bloomberg scheduled and held a public bill-signing hearing to sign the Term-Limits Amendment into law on the morning of November 3, 2008. During his remarks, Mayor Bloomberg reiterated that he had made a "commitment" to appoint a Charter revision commission to put the term-limits issue back on the ballot through a Citywide referendum after the next election cycle, underscoring the one-time benefit that the Bill was intended to confer on himself and the Council Members who passed it.

105. As before, an overflow crowd jammed into City Hall and waited hours in line in the rotunda area before they individually were allowed into the Blue Room to make their no-longer-than-two minute statements. After their presentations, the speakers were asked to leave the Blue Room. The bill-signing hearing lasted more than four hours, during which time more than 130 people spoke. And, as before, members of the crowd could not contain themselves,

voicing their objections during the proceedings and then shouting their disapproval outside after the proceedings.

106. At the conclusion of the hearing, Mayor Bloomberg signed the Term-Limits Amendment into law. As enacted, the Term-Limits Amendment is denominated Local Law No. 51 of 2008.

107. Accordingly, section 1137 of the City Charter, as amended, now provides that:

> It is hereby declared to be the public policy of the city of New York to limit the time elected officials can serve as mayor, public advocate, comptroller, borough president and council member so that elected representatives are "citizen representatives" who are responsive to the needs of the people and are not career politicians. It is further declared that this policy is most appropriately served by limiting the time such officials can serve to not more than *three full consecutive terms*.

N.Y. City Charter § 1137 (emphasis added).

108. Likewise, section 1138 of the City Charter, as amended, now provides that:

> [N]o person shall be eligible to be elected to or serve in the office of mayor, public advocate, comptroller, borough president or council member *if that person had previously held such office for three or more full consecutive terms*, unless one full term or more has elapsed since that person last held such office . . . .

Id. § 1138 (emphasis added).

H. The Aftermath: New York City Voters Are Silenced As Entrenched Politicians Prepare to Run for Third Terms

109. The vote of the City Council effectively nullified the civic efforts, millions of dollars spent, and years of debate that culminated in two separate referenda that brought term limits to New York City.

110. As a result, incumbents—armed with the financial and media advantages intrinsic to their positions—are entitled to run for a third term in 2009. If the 2009 elections even remotely track previous municipal elections, these incumbents have little chance of being

unseated. *See* Ronald S. Lauder, Letter to the Editor, *New York Needs Term Limits for City Council and Top Posts*, N.Y. Times, Sept. 4, 1993, at A18.

111. According to published reports, advisers to Bloomberg have put together a reelection plan that could cost $80 million dollars or more. A good fraction of this money is specifically allocated to targeting potential opponents of the Mayor. David W. Chen and Raymond Hernandez, *Mayor Plans an $80 Million Campaign*, N.Y. Times, Oct. 9, 2008 at A27.

112. Mayor Bloomberg is not the only City official who intends to run for a third term. Numerous Council Members, empowered by their new opportunity to remain in office, now likewise plan to seek re-election next November. For example, Speaker Quinn has announced her intention to run for re-election to the Council, rather than for Mayor next year. In light of the incumbent re-election rates achieved in recent City Council elections, these formerly term-limited incumbent Council Members (and some other incumbent City officials) seeking re-election to their current offices enjoy an advantage over other candidates running against them.

I. What Is at Stake: Protection of the Fundamental Right to an Effective Vote and Effective Access to the Ballot

113. Mayor Bloomberg's and the City Council's actions have disenfranchised voters rich and poor, liberal and conservative, in every Borough, of every ethnicity. Five classes of Plaintiffs have thus joined together in this action to seek this Court's intervention to safeguard their fundamental constitutional rights.

114. They include elected officials who fervently opposed the Term-Limits Amendment as City Council Members and the Public Advocate—individuals who have been integrally involved in this matter from the outset, who care about the outcome, and who are advocating here on a matter of great import to their constituents.

115. They include voters from all walks of life—and all five boroughs of this great City—who, like the vast majority of New Yorkers, voted to impose term limits in the 1993 Referendum and to preserve them in the 1996 Referendum, and who would vote to restore them if given such an opportunity.

116. They include prospective candidates for public office who, believing in and relying on the sanctity of the voter-enacted two-term limit on current incumbents, launched their campaigns, raised and spent money, and committed to strategies, only to have the rug pulled out from under them by the Mayor's and City Council's action.

117. They include a "good government" group, NYPIRG, which cares deeply about preserving the fundamental rights of all New Yorkers and often appears in such cases to safeguard the public against governmental abuses of power.

118. And finally, they include an organization—U.S. Term Limits—that invested greatly and advocated tirelessly in support of the 1993 and 1996 Referenda and, along with all other Plaintiffs, stands now in support of the fundamental proposition that the votes cast in those Referenda cannot be discounted by the Mayor and City Council.

119. These Plaintiffs stand together before this Court to protect the fundamental right to vote and to ensure effective and meaningful access to the ballot for all New Yorkers. By improperly disregarding the voice of City voters as codified by the two Referenda, the Mayor and City Council have rendered meaningless those voters' fundamental right to vote how they see fit and have destroyed the value of the direct access to the ballot that voter referenda were intended to afford.

120. Plaintiffs de Blasio and James, having.previously sponsored a legislative proposal that sought to establish a Charter revision commission to get the issue of term limits back on the

ballot, hope and intend to obtain an expeditious ruling from this Court declaring the Term-Limits Amendment invalid, so that they, along with other City officials, might then take steps to submit this issue to City voters for a third time early next year, to once again reconfirm the twice-expressed will of City voters to impose a two-term limit on their elected officials.

J. The First and Fourteenth Amendments to the United States Constitution Prohibit the Mayor and City Council's Unconstitutional Power Grab

121. The Due Process Clause of the Fourteenth Amendment to the United States Constitutions forbids incumbent elected officials from enacting legislation for the sole purpose of entrenching themselves in power.

122. The First Amendment to the United States Constitution—incorporated and made applicable to the States through the Fourteenth Amendment—protects the right to associate for the advancement of political beliefs and purposes.

123. At its core, the First Amendment protects the right to political speech and meaningful elections. As part and parcel of these core protections, the First Amendment also protects the right to vote.

124. The First Amendment right to engage in political discourse and participate in meaningful elections can be violated just as effectively by legislative measures taken *after* a vote is cast as by the inhibition of speech or access to the ballot box. As the federal courts have explained, the right to suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

125. For this reason, the Supreme Court has explicitly held that the First Amendment protects the right to vote *effectively*, and has cautioned that even the most basic rights prove illusory if the power of voting is undermined.

126. The First Amendment's protection of the right to an effective vote includes the right not to have one's vote nullified by self-interested legislative action. Indeed, this protection is of particular importance where the subject of the vote circumscribes the power and tenure of the very same elected officials who have nullified that vote.

127. The First Amendment also prohibits legislative enactments that chill protected First Amendment political expression. Legislative enactments that discourage such protected speech and debate are inherently suspect—especially where the enactments target speech and debate that run counter to the personal interests of elected officeholders.

128. The Supreme Court has explained that First Amendment challenges to such legislative enactments are to be evaluated according to the realistic impact caused by the challenged enactments. Where the realistic impact of such enactments results in the chilling of protected political expression, those enactments violate the First Amendment.

129. Referenda and other direct ballot measures are an important and constitutionally protected mechanism to seek and achieve political change. The Supreme Court has thus made clear that resort to the ballot through referenda and similarly direct democratic initiatives is a core political activity protected by the First Amendment.

130. Once a State or municipal body grants access to the ballot for the purpose of invoking such mechanisms, it cannot unduly restrict or impair that access without violating voters' First Amendment rights. State and local law clearly grants New York City voters the right to hold referenda such as the 1993 and 1996 Referenda, and the voters exercised that right in those Referenda to enact term-limits legislation—legislation that the Mayor and City Council now would override by way of Council legislation without obtaining any voter approval.

131. Actions or measures that impair such activity by discouraging the use of such direct ballot measures thus violate the First Amendment every bit as much as outright prohibitions on the right to vote. Courts in this very District have explicitly stated that "severely burdened ballot access" poses "an undue burden . . . on the right to vote under the First Amendment." *Molinari v. Powers*, 82 F. Supp. 2d 57, 69-71 (E.D.N.Y. 2000) (Korman, J.).

FIRST CAUSE OF ACTION

(Deprivation of Rights Secured by the First and Fourteenth Amendments to the United States Constitution in Violation of 42 U.S.C. § 1983—Right to Meaningful Vote)

132. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-131 as if fully set forth herein.

133. The 1993 and 1996 Referenda involved intense public discourse concerning a policy and political change that ultimately led to the widespread expression of the popular will in the form of two Citywide votes—precisely the type of speech, association, and political activity that is most closely protected by the First Amendment. The Referenda prompted significant outlays of effort, time, and money. Impassioned public debate on the merits of enacting and preserving term limits preceded each vote. Organizations—including New Yorkers for Term Limits—were founded specifically for the purpose of pursuing and preserving meaningful electoral reform in New York City. Millions of dollars were spent on advertising advocating for or against the two Referenda. And more than a million City voters cast votes in each of those referendum processes, each time towards the same result—the imposition of a two-term limit on the Mayor, Members of the City Council, the Comptroller, the Public Advocate, and the five Borough Presidents.

134. This core First Amendment activity—the speech, the effort, the money spent, the time devoted, and the votes ultimately cast—was completely nullified by the unprecedented

legislation passed by the City Council and signed into law by the Mayor, holders of the very public offices that the voting public sought to constrain in voting to impose (and then preserve) the two-term limit.

135. The Mayor's and City Council's nullification of millions of votes and other First Amendment activity, moreover, was preceded by none of the robust dialogue that resulted in the two Referenda votes. To the contrary, while the Referenda were presented to and acted upon by the City's voters after months of intense public debate, the Mayor and City Council saw fit to undo the Referenda with an ill-advised and extraordinarily abbreviated process.

136. The actions of the Mayor and City Council were not justified by any compelling or even any legitimate State interest.

137. In overriding the twice expressed will of the voters of New York City, the Mayor and City Council violated the First Amendment's guarantee of a meaningful right to vote and otherwise participate in the political process. *See Molinari*, 82 F. Supp. 2d at 69 (Korman, J.).

138. Defendants Bloomberg, Quinn, and the City Council all acted under the color of state law.

139. Plaintiffs have no adequate remedy at law.

140. Accordingly, Plaintiffs seek a declaration that the Term-Limits Amendment is unconstitutional under the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and an injunction preventing any enforcement of that Amendment.

SECOND CAUSE OF ACTION

(Deprivation of Rights Secured by the First and Fourteenth Amendments to the United States Constitution in Violation of 42 U.S.C. § 1983—Chilling of Political Expression)

141. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-140 as if fully set forth herein.

142. In claiming the right to nullify the results of the 1993 and 1996 Referenda at any time—absent any procedural protections or guarantee of debate—the Mayor and City Council have created significant disincentives for engaging in the political expression protected by the First Amendment, and have thereby unconstitutionally chilled future political speech.

143. The realistic impact of the Term-Limits Amendment will be to limit expression by discouraging New York City voters from initiating referenda.

144. Plaintiffs and other proponents of the 1993 Referendum and opponents of the 1996 Referendum, along with all of those on the other side of the issue, expended significant time, energy, and resources towards advancing their political purposes. Plaintiffs and other politically engaged New York City voters and organizations would not have participated so extensively in the political process had they known that the City Council would claim the right to nullify the results of the Referenda.

145. Moreover, Plaintiffs and other New York City voters and organizations will be less willing to engage in protected political expression on these types of issues in the future, knowing that the fruits of their efforts can be abruptly and easily nullified.

146. The chill will be particularly acute for political speech that challenges the private interests of political officials—exactly the area of First Amendment speech entitled to the highest degree of protection.

147. The message sent by the enactment of the Term-Limits Amendment is unmistakable—that any effort by the voters to limit the powers and benefits of elected City officials can be summarily undone by those same City officials.

148. The Term-Limits Amendment thereby creates a strong disincentive for engaging in core First Amendment speech and activity that runs at cross-purposes with the entrenched

private interests of officeholders—exactly the type of speech and activity that the First Amendment is meant to foster.

149. The resulting chill to future speech is constitutionally abhorrent and is not justified by any compelling or even any legitimate State interest.

150. Defendants Bloomberg, Quinn, and the City Council all acted under the color of state law.

151. Plaintiffs have no adequate remedy at law.

152. Accordingly, Plaintiffs seek a declaration that the Term-Limits Amendment is unconstitutional under the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and an injunction preventing any enforcement of that Amendment.

THIRD CAUSE OF ACTION

(Deprivation of Rights Secured by the First and Fourteenth Amendments to the United States Constitution in Violation of 42 U.S.C. § 1983—Denial of Access to the Ballot)

153. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-152 as if fully set forth herein.

154. The 1993 and 1996 Referenda were expressions of the voters' desire to change the term limits applicable to elected City officials and the ultimate decision to affect this change, activity which lies at the heart of the First Amendment.

155. The placement of the 1993 Referendum on the ballot required enormous outlays of money, time, and effort by New York City voters and the organizations that represented them. Proponents of placing the referendum on the ballot painstakingly gathered over 130,000 signatures over the course of six months.

156. By negating these efforts to place the two-term limit on the ballot and nullifying the millions of votes subsequently cast by New York City voters during the Referenda, the

Mayor and City Council have created significant disincentives to participation in the referendum process.

157. Likewise, by maintaining the position that the Term-Limits Amendment is not subject to approval by referendum even if Plaintiffs or other interested parties gather a sufficient number of signatures, the Mayor and the City Council have further discouraged New York City voters from attempting to participate in the referendum process.

158. Plaintiffs and other proponents of the 1993 Referendum and opponents of the 1996 Referendum, along with all of those on the other side of the issue, expended significant time, energy, and resources towards advancing their political purposes. Plaintiffs and other politically engaged New York City voters and organizations would not have participated so extensively in the referendum process had they known that the City Council would claim the right to nullify the results of the Referenda.

159. Moreover, Plaintiffs and other New York City voters and organizations will be less willing to engage in protected political expression on these types of issues in the future, and less willing to invoke the referendum process to do so, knowing that the fruits of their efforts can be abruptly and easily nullified.

160. The already-substantial effort required to successfully place a referendum on the ballot will thus increase dramatically as a result of the Mayor's and City Council's actions, thereby "reduc[ing] the number of signatures gather[ed,] reduc[ing] the amount of voices who will convey the message, . . . and reduc[ing] . . . the consequent debate . . . that elections resolve." *Molinari*, 82 F. Supp. 2d at 76 (Korman, J.).

161. The realistic impact of the Term-Limits Amendment will thus be to limit expression by discouraging New York City voters from bringing referenda and to severely

burden individuals and groups seeking to access the ballot through referenda and other ballot measures intended to directly implement the will of the people.

162. The burden will be particularly high for referenda that aim at policing and constraining the power of political officials—an area of First Amendment speech entitled to the highest degree of protection.

163. The burden so imposed is not justified by any compelling or even any legitimate State interest.

164. The Term-Limits Amendment is thus unconstitutional because it "limit[s] the number of voices who could convey the message of [an] initiative's proponents . . . , reduce[s] the chance that the initiative proponents [will] gather signatures sufficient in number to qualify for the ballot, and thus limit[s] the proponents ability to make the matter a focus of . . . discussion." *Id.* at 76 (Korman, J.) (quotations omitted).

165. Plaintiffs have no adequate remedy at law.

166. Accordingly, Plaintiffs seek a declaration that the Term-Limits Amendment is unconstitutional under the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and an injunction preventing any enforcement of that Amendment.

FOURTH CAUSE OF ACTION

(Deprivation of Rights Secured by the Fourteenth Amendment to the United States Constitution in Violation of 42 U.S.C. § 1983—Denial of Due Process)

167. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1-166 as if fully set forth herein.

168. The sole and intended effect of the Term-Limits Amendment is to entrench incumbents in elected office.

169. But the Due Process Clause precludes legislators and other elected officials from acting in such a self-interested manner. Federal courts have held that the Due Process Clause protects against dangerous distortions to the operation of the electoral system and incumbents' efforts to manipulate their own re-election prospects and thereby insulate themselves from effective electoral controls.

170. By legislatively nullifying the results of the 1993 and 1996 Referenda, which were explicitly intended to guard against the perpetual maintenance of political power by an isolated set of officeholders, the Term-Limits Amendment transgressed the constitutional bar on self-interested maneuvers by political incumbents to entrench themselves in office, was patently and fundamentally unfair, and thus was in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

171. Plaintiffs have no adequate remedy at law.

172. Accordingly, Plaintiffs seek a declaration that the Term-Limits Amendment is unconstitutional under the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and an injunction preventing any enforcement of that Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and the following relief:

(a) A declaration that the Term-Limits Amendment is unconstitutional and invalid because it violates the First and Fourteenth Amendments to the United States Constitution;

(b) An injunction against Defendants Sampel and Board of Elections, barring them from listing term-limited City officials on the ballot in the 2009 City elections;

(c) An award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(d) Such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 10, 2008

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Randy M. Mastro

Randy M. Mastro (RM-9492)
Jim Walden (JW-0447)
Richard A. Bierschbach (RB-7861)
Gabriel Herrmann (GH-2436)

200 Park Avenue, 47th Floor
New York, New York 10166-0193
rmastro@gibsondunn.com
jwalden@gibsondunn.com
rbierschbach@gibsondunn.com
gherrmann@gibsondunn.com
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

– and –

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NORMAN SIEGEL, ESQ.

By: Norman Siegel
Norman Siegel (NS-6850)
siegelnorman@aol.com
260 Madison Avenue, 18th Floor
New York, New York 10016

Telephone: (212) 532-7586
Facsimile: (212) 448-0066

Attorneys for Plaintiffs Guy Molinari, William C. Thompson, Jr., Betsy Gotbaum, Bill de Blasio, Letitia James, Charles Barron, Rosalie Caliendo, Phil DePaolo, Phillip Foglia, Andrea Rich, Mike Long, Tom Long, Ida Sanoff, Gloria Smith, Eric Snyder, Kenneth J. Baer, Kenneth A. Diamondstone, Peter Gleason, Mark Winston Griffith, Ari Hoffnung, Alfonso Quiroz, Ydanis Rodriguez, Jo Anne Simon, and U.S. Term Limits

LOVELLS LLP

By: *Pieter Van Tol*
Pieter Van Tol (PVT-2455)

590 Madison Avenue
New York, New York 10022
Pieter.VanTol@LOVELLS.com
Telephone: (212) 909-0600
Facsimile: (212) 909-0660

Attorneys for Plaintiff New York Public Interest Research Group, Inc.